IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10891 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GULAMNABI RASULBHAI VOHRA

Versus

DEPUTY COLLECTOR

Appearance:

1. Special Civil Application No. 10891 of 2000

MR BG JANI for Petitioner No. 1

GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 01/05/2002

ORAL JUDGEMENT

The present petition is preferred by the petitioner against the order, dated 30.6.2000 passed by the Deputy Collector, Nadiad whereby the licence of stamp vendor is cancelled.

2. The short facts of the case are that the petitioner was holding the licence of stamp vendor and bond writer. It is the case of the petitioner that he is holding the licence since 1976. The case of the petitioner is that the licence is required to be renewed every year and for the year 1997, i.e. from 1.1.1997 to 31.12.1997 he had applied for renewal of licence. However, the petitioner has stated that on 8.1.1998 he was communicated by the office of the Deputy Collector that his licence for the period 1.1.1997 to 31.12.1997 is renewed. It is the case of the petitioner that the decision was taken for renewal on 28.8.1997, but however he was communicated about the same on 8.1.1998. The case of the petitioner is that as the licence was not renewed or that since the renewal was not communicated to him he could not sell the stamps in the absence of specific communication regarding a valid renewed licence.

3. However, it appears that on 11.1.1999 an order came to be passed by the Deputy Collector, Nadiad for cancellation of the licence of the petitioner on the ground that for the year 1997-98 the petitioner did not sell the stamps. The aforesaid order came to be passed by the Deputy Collector inspite of the request made by the son of the petitioner for adjournment and therefore the petitioner had preferred the Special Civil Application No.1794/99 before this Court. In the said petition ultimately on 6.3.2000 this court (Coram: C.K.Thakkar,J as His Lordship then was) allowed the petition by quashing the order dated 11.1.1999 passed by the Deputy Collector and remanded the matter by directing for rehearing of the matter afresh. Thereafter, the matter was once again taken up for hearing by the Deputy Collector and so far as the period from 1.1.1997 to 31.12.1997 is concerned, the Deputy Collector proceeded on the basis that the licence was renewed on 27.8.97 and so far as the period from 1.1.1998 to 31.12.1998 is concerned the Deputy Collector proceeded on the basis that the licence was renewed on 2.7.98. Therefore, it was found by him that since the stamps were not purchased and sold there is breach of Rules 3 & 9 of the Stamp Supplies & Sales Rules, 1987 and therefore the licence was cancelled as per the order dated 30.6.2000. It is this order which is under challenge in this petition.

4. Mr.Jani appearing for the petitioner submitted that so far as the period from 1.1.1997 to 31.12.1997 is concerned, since the communication regarding the renewal of licence was made in January, 1998 naturally the petitioner could not sell the stamps in the absence of

availability of valid renewed licence. Mr.Jani further submitted that so far as the period from 1998 is concerned, the licence was renewed only on 2.7.98 and therefore prior thereto naturally the petitioner could not sell the stamps in the absence of valid renewed licence. Mr.Jani submitted that the perusal of order dated 11.1.1998 shows that immediately after the period of 3 months from the renewal of licence in the month of July, 1998 the report is made by the Superintendent of Treasury, Kapadwanj and on that basis the proceedings are initiated. He, therefore, submitted that when the authority did not renew the licence within the stipulated time limit and for non-availability of valid renewed licence, if the petitioner has not sold the stamps it could not be said that any terms and conditions of the licence are breached which would call for cancellation of licence.

5. On behalf of respondents no affidavit in reply is filed. Therefore, this court is constrained to accept the factual aspects as narrated by the petitioner and as borne out from the orders and record produced before this court.

6. A perusal of relevant rules namely Gujarat Stamp & Sales Rules, 1987 shows that Rule 3 provides for various types of stamps and it also provides that the stamps of class (1)(b) and class (2) shall be sold to the public by vendors in the manner prescribed. Rule 6 provides for enabling power to Collector to appoint certain persons to be licenced stamp vendors for a period of one year. Sub Rule (2) of Rule 6 provides that the licence may be renewed for a further period of one year at the end of financial year. Provided that when licensed vendor has committed breach of any of these rules or has failed to maintain adequate stock of stamps or has refused to sell particular kind or denomination of stamps inspite of its stocks lying with him or has failed to deposit the stock register as provided in sub-rule(3) the authority competent to renew the licence may refuse to renew the licence.

7. In view of the above, it is clear that in some cases as per proviso to Rule 6(2) the authority may decline to renew the licence. The conditions provided under Appendix I does not compel any minimum sale of or denomination of stamp by the stamp vendor and therefore the matter will have to be examined accordingly.

8. A perusal of the order passed by the authority shows

that the power which is sought to be exercised would be other than the powers under Rules 3 & 9 of the Rules. Neither perusal of Rule 3 nor 9 provide for any enabling power for cancellation of licence on the ground that the stamps are not purchased and sold and therefore the order becomes vulnerable on the ground of nonapplication of mind. That apart, even if the record of the case is considered, then also it transpires that when in absence of a valid renewed licence, the licenceholder has not sold the stamps it can not be said that there is any breach of any of the conditions of licence more particularly when none of such conditions are provided under Appendix I. The petitioner was on the contrary justified in not selling the stamp during that period and if the delay is committed by the authority in renewing the licence and its communication the petitioner can not be made to suffer. Therefore, I am of the view that the order passed by the authority is not only unreasonable but at the same time it is also ultravires since there is no condition provided for sale of stamps of minimum denomination or value during the period when the licence is there with the concerned stamp vendor.

9. Under the circumstances, the impugned order dated 30.6.2000 at annexure "F" to the petition deserves to be quashed and is hereby quashed.

10. Rule is made absolute accordingly. There shall be no order as to costs.

1.5.2002 (JAYANT PATEL,J)